

TJW



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/902,767

Confirmation No. 9584

In re application of:

Group Art Unit: 1661

Robert Noodelijk

Examiner: Jane Hwu

Filed: July 12, 2001

For: CHRYSANTHEMUM PLANT NAMED 'WHITE ELITE REAGAN'

REQUEST FOR RECONSIDERATION

U.S. Patent and Trademark Office  
Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, Virginia 22313-1450

Sir:

Applicant requests reconsideration of the rejections in the Office Action mailed December 2, 2005 in light of the following remarks.

The claims stand rejected under 35 USC 102 as allegedly anticipated by any of PBR CHR 2752 (Netherlands), PBR 19970499 (EU), and PBR 000536 (Poland) in view of an "admission" that the cultivar was first sold in the Netherlands in December 1998, in light of the Australian Plant Variety Journal Quarter One, 2004, Vol. 17, No. 1, page 304 showing sale in the Netherlands on January 15, 1998 and the New Royal Horticultural Society Dictionary of Gardening, 1992, Vol. 1,

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pages 614 to 618, describing the asexual reproduction of chrysanthemums.

As a matter of clarification, applicant did not admit that the first sale in December 1998 was made in the Netherlands. Prosecution up to and including the filing of the Brief on Appeal mentioned sales outside the United States, but no particular country was mentioned. The Examiner's Answer mailed May 5, 2004 stated, in error, in the last paragraph on page 3 that the first sale was in the Netherlands. Moreover, the newly-cited Plant Variety Journal Quarter One 2004 indicates the first sale in the Netherlands took place on January 15, 1999, not January 15, 1998.

Applicant points out, as noted in other pending cases for this assignee, that information regarding a cultivar that is identified only by a breeders' reference in a PBR is not made available to third parties enquiring about the same when the enquiry is based upon that breeders' reference. Thus, the assertion in the Office Action that a person need merely contact the assignee to get confirming information is not correct. Information may be provided after publication of the cultivar name, but such information is not readily available because the plant material is not provided directly to the public, and information only on availability to the public in the Netherlands is accessible through the assignee. The assignee must consult with propagating companies in Holland to

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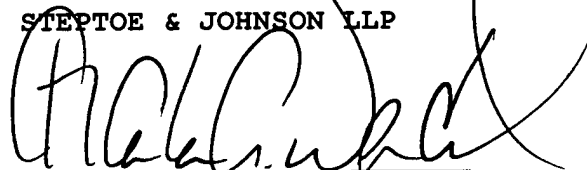
determine which flower growers cultivate the variety in interest specifically, to which the enquiring party must necessarily be directed. The ready access suggested by the Examiner is not there and the claim is patentable.

The Examiner should also note that the Dutch PBR title was surrendered on July 16, 2001, which is also shown in the record of this case.

Reconsideration of the application is earnestly solicited.

Respectfully submitted,

STEPTOE & JOHNSON LLP



Date: March 1, 2006

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Atty Docket: 28967.0110

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Enclosures:

Pages from 1999 CBA Catalog  
Copy of June 23, 2005 letter from CPVO